SUMMARY OF AND RESPONSE TO ORAL TESTIMONY GIVEN AT PUBLIC HEARING JANUARY 24, 2006

All testimony offered at the public hearing on January 24, 2006 provided the same information as that included in the written comments provided by the speaker's organization. Text within a verbatim comment that is enclosed within brackets is offered to replace incorrect text used by the court reporter. Comments not specifically directed to the proposed regulations or the regulation processes followed have not been included in this summary. The following table identifies each person who testified at the public hearing and the organization the speaker represented.

Oral Comment By:	**On behalf of:**
Ted Angelo	Association of California Life and Health Insurance Companies (joint written comment submitted with ACLI)
Kerian Bunch	Fireman's Fund Insurance Companies (Allianz group of companies)
Marsha Cohen	Reinsurance Association of America
Debra Hall	Swiss Re
Tracey Laws	Reinsurance Association of America
John Mangan	American Council of Life Insurers
Doug Martin	Fireman's Fund Insurance Companies (Allianz group of companies)
Phillip O'Connor	Reinsurance Association of America
Mike Paiva	Personal Insurance Federation of California
Samuel Sorich	Association of California Insurance Companies Property Casualty Insurer's Association
Steve Suchil	American Insurance Association
Bruce Young	Reinsurance Association of America

EXHIBIT "B"

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Philip O'Connor, on behalf of Reinsurance Association of America	P. 6 - 7, General comment	"I think the first thing to note is that both the Commissioner and the Department staff that have worked on this deserve credit for recognizing at the outset and to the summary of the Regs that there is the "potential for significant statewide adverse economic impact" is the quote that would affect business and the ability of California businesses to compete with business in other states. Now a little bit later in the summary, that postulate is rejected, but it is rejected on the basis that at least the summary says -- there is no evidence, that that would be the case. Let me dispute that because I think it is important that particularly in the absence of any specific study that engages in what is probably, fairly futile exercise if to estimate the specific impact. … There are conditions down here in the real world that regulations don't change. It is more likely that the real conditions of the world will actually affect the operation of the regulations in ways that produce unintended consequences. I think we would all agree that those in policy-making positions in the roles of carrying out the laws and making the rules, have to be attentive to the unintended consequences, at least as much as being attentive to the intended consequences."	In the section titled "Economic Impact on Businesses and the Ability of California Businesses to Compete" of the Notice of Proposed Action, the Commissioner noted that the regulations could have negative impacts on insurance capacity and financial strength, which might impose costs on ceding insurers and reinsurers, and which might impact the availability of reinsurance. For example, the section noted that contract clause requirements and provisions regarding set-offs could make business less desirable to reinsurers and it noted that provisions which require the retention of greater levels of surplus and risk may impact investment income. The Commissioner concluded, as stated in the section, that there is no evidence that these potential impacts will be significant, and that " ... the benefit to be gained by the proposed regulations in safeguarding the solvency of licensed insurers and protecting the interests of their policyholders and creditors outweighs the likely adverse economic impact." Mr. O'Connor's comment disputes that there is no evidence that the regulations will have an adverse economic impact, but his statement does not offer any factual basis for the statement and concedes that it would be a "fairly futile exercise to estimate the specific impact…" Moreover, he does not identify areas that he believes will be significantly affected. Mr. O'Connor's

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			statement also does not indicate the theoretical framework for his belief, except that he states that regulations produce unintended consequences. In the absence of either a factual or theoretical basis for asserting that the regulations will create a significant impact, the Commissioner is unable to respond to Mr. O'Connor's concerns. However, in response to industry concerns, the regulations have been significantly modified. The scope has been narrowed, reducing the number of affected insurers, and many contract requirements have been deleted. To the extent that the prior requirements created direct or indirect expense or costs for licensees, the changes have eliminated those expenses. Moreover, the major trade associations have submitted written statements of non-opposition to the revised regulation text.
Philip O'Connor	P. 8 General comment	" ... there should be pretty clear and compelling evidence if one is contemplating any significant departure from model rules and laws that have been in place or have been developed in the NAIC process."	As respects credit for reinsurance, the regulations, both as initially and currently drafted, are based in large part on Department of Insurance Bulletin 97-5, which in turn was based on the NAIC Credit for Reinsurance Model Regulations. Bulletin 97-5 has been in effect since December 1997. Neither the Bulletin nor the proposed regulations differ significantly from the subject model regulation; the few deviations from the Model are noted in the Initial Statement of Reasons.. Mr. O'Connor's

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			statement is general and does not refer to any section of the regulations that he considers to be a "significant departure" from the NAIC model regulations.
Philip O'Connor	P. 8 -10, General comment	" .. these rules will have a tendency ... to make it more risky and therefore more costly for a reinsurer to do business, whether that is the costs of the primary insurer or the costs to the reinsurer ... but if you want to do something that inadvertently limits the supply of reinsurance and there, of course, raising the price -- We all know that no state can sequester capital." "What I am warning against here is taking steps to inadvertently increase the risk to the reinsurer in a way that causes an increase in the price that is a result of a decrease in supply. ... a theory tells us there is an effort to sequester capital in some fashion or to oppose [impose] conditions on the capital that is going to have a price to it."	This comment does not offer a factual basis or theoretical framework supporting the contention that the regulations will make reinsurance "more risky" for a reinsurer. The type of risk or exposure is not identified, but presumably the comment is not contending that the underlying insurance risks that are transferred by the reinsurance contract will become more risky (alternatively, if that is the risk, then it is unclear why that risk would increase.) If the "risk" is, for example, that a reinsurer will have to pay losses that it would not otherwise pay, or that it would have to pay a loss sooner than it would otherwise pay, then such "risks" may be beneficial to ceding insurers and California insureds. Without identifying the nature of the risks, the Commissioner cannot respond to the contention. (The comment does not appear to address the "risk" to a ceding insurer that financial statement credit may be denied.) Further, the comment does not offer a factual basis or theoretical framework for the contention that reinsurance will become less available in California. As set forth in response to Mr. O'Connor's written

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			comments, many parts of the proposed regulations are contained in Bulletin 97-5 and are based on the NAIC's Model Regulations. Because the reinsurance industry has operated in California with Bulletin 97-5 in place since December 1997, it is unlikely that its adoption in the form of regulations will cause a restriction of reinsurance availability. The comment does not offer a basis for concluding that the price of reinsurance may rise. The comment does not indicate which sections of the regulations might impose additional costs, the extent of such costs, and whether such costs could be expected to be reflected in the price of reinsurance, or whether competition in the marketplace could, for example, keep minor costs from being passed through to the ceding insurer. However, in response to industry concerns, the regulations have been significantly modified. The scope has been narrowed, reducing the number of affected insurers, and many contract requirements have been deleted. To the extent that the prior requirements created direct or indirect expense or costs for licensees, the changes have eliminated those expenses. Moreover, the major trade associations have submitted written statements of non-opposition to the revised regulation text.

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Philip O'Connor	P. 10 -11, General comment on set-off	"The second area related to that is the that of the setoffs. ... you could well have the unattended [unintended] effect of limiting the supply of the very thing you want to have instead of liquidating the situation. ... it creates a whole different asymmetry that will be priced; about that, there can be little doubt."	The set-off provisions contained in §§2303.13 and 2303.14 have been deleted.
Philip O'Connor	P. 11 -13, General comment	"The third area is that of the effort in the Regs to give some extra territorial scope of all this. ... I think the problem is whether you are going to actually achieve what you want to achieve. ...some carriers might decline to do business ... other might devise reinsurance arrangements that comply with the letter of the rule but hopefully not to the substance of it. ... [reinsurers may] create civil/state subsidies [subsidiaries] that are able to comply with the rules, but where the effect is not what you would like to have. ... we've learned ... the importance of having national level insurers with substantial surplus and thick capitalization as opposed to thin capitalization, being present in a state to manage catastrophe risks ... "	The Commissioner addressed the "extraterritorial" issue at length in his response to written Comment No. 4 (included in Exhibit A to the Final Statement of Reasons), and incorporates that response here. The comment does not indicate which sections of the regulations are believed to create an extraterritorial burden that is substantial enough to cause reinsurers to either decline to assume reinsurance risks or to set up subsidiaries that will assume California insurance risks. The comment does not indicate a basis for assuming that costs or risks created by "extraterritorial" sections of the regulations would be so significant that they would be reflected in reinsurance pricing, and if so reflected, that they would be so substantial as to make reinsurance unaffordable or undesirable. As stated in the response to Mr. O'Connor's written comments, the possibility that persons will attempt to evade the regulations always exists, but that cannot be a basis for choosing not to address reinsurance oversight and insurance insolvency

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			issues. Finally, as also noted in response to Mr. O'Connor's written comments, the Commissioner is unlikely to permit thinly capitalized reinsurers to accept risks that they cannot support.
Marsha Cohen, Reinsurance Association of America (RAA)	P.17, General comment	"We do believe that it [the regulations] is a conflict to statutory authority -- that there is no statutory authority. It conflicts with some of the NAIC financial statement requirements. ... The amendments to this California Reg 2303 deviate from the regulatory and accounting norm required from insurance companies from other states, deviate substantially from the California statutory authority adopting accounting principles, and conflicts with California statutory authority.	Ms. Cohen's comments do not indicate which sections of the proposed regulations she contends cannot be adopted because there is no statutory authority. A number of sections have been revised and the RAA has advised the Commissioner that it does not object to adoption of the revised regulations. Therefore, it appears that the sections that the RAA previously objected to as being without authority have been deleted or revised, or the RAA has determined that the sections are based on authority contained in the Insurance Code. The Notice of Proposed Actions identifies the statutory and case law authority for each proposed regulation section. Among other sections, Insurance Code §922.8(d) authorizes and requires the Commissioner to adopt regulations that implement Insurance Code §§922.1, *et seq.* As set forth in response to the comments provided at the hearing by Philip O'Connor, the proposed regulations are based in most part on the NAIC Credit for Reinsurance Model Regulations. To the extent that

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			other states' laws and regulations pertaining to credit for reinsurance are based on the NAIC model law and regulations, therefore, the proposed regulations do not deviate from the "regulatory and accounting norm required ... from other states." Further, it is not correct that the proposed regulations "deviate substantially from the California statutory authority adopting accounting principles." Insurance Code §923 provides that annual and quarterly financial statements shall conform to the NAIC's Accounting Practices and Procedures Manual, but only as follows: " ... to the extent that the practices and procedures contained in the manual do not conflict with any other provision of this code. The commissioner may make changes from time to time in the form of the statements .... as seem to him or her best adapted to elicit from insurers a true exhibit of their condition." The Commissioner may implement accounting requirements that differ from NAIC requirements.
Marsha Cohen	P.18, General comment	"Dictates -- unfortunately -- there are dictated certain contract provisions in the regulation -- and reinsurance is really done on a manuscript basis. ... Applying mandatory contract provisions will impact the way companies are able to negotiate what they need. One of the tenants [tenets] of the NAIC accreditation program is the fact that each state ... regulates their own domestic companies. .... Unfortunately, this	§2303.13, which requires certain contract provisions in reinsurance agreements for which the ceding insurer takes statement credit, has been substantially revised and the RAA does not object to the revised section. The assertion that reinsurance contracts are done "on a manuscript basis" is not supported with sufficient data

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		regulation regulates California domestics, foreign insurance companies, California domestic reinsurers and foreign reinsurance [reinsurers]."	or facts and the Commissioner believes that it is not an accurate statement regarding routine contract clauses in reinsurance agreements. The Commissioner understands the term "manuscript basis" to mean that a reinsurance contract is unique, does not use standard clauses or terms, and/or is not based on standardized forms. Although the specification of the business being reinsured, the risk attachment points, pricing, and perhaps payment, notice or inspection terms may vary by agreement, the Commissioner believes that ceding insurers and reinsurers have standardized contract clauses pertaining to issues that need to be covered in every agreement and which may not be the subject of much negotiation. For example, jurisdiction, venue, payment, inspection, audit, and notice clause may be fairly routine. Presumably, clauses that pertain to NAIC Accounting requirements are fairly routine. The use of standardized contract clauses is a common business practice and its expected impact on ceding insurers and reinsurers should be to reduce transaction costs and provide greater clarity and certainty in reinsurance transactions. As revised, §2303.13 requires only two clauses in reinsurance agreements: an “entire agreement” clause which is a routine clause, and an “insolvency” clause which is required by every state and is a routine clause.

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			The objection that the regulations "regulate .. foreign insurance companies ... and foreign reinsurance" has been responded to at length in the response to written Comments No. 4, 7, and 56 through 61, and the Commissioner incorporates those responses here.
Marsha Cohen	P. 19, general comment	"A regulatory proposal that deviates from the national regulatory norm, second guesses the decision made by other insurance regulatory officials in other states. It also results in the fact that you have conflicting laws and conflicting requirements and domiciles in other states and do business in California. ... Implementation of this regulation will lead to uncertainties in the marketplace and a reevaluation by the insurance executives with the respect to the conditions in which they are willing to do business in this state.'	The Commissioner addressed the issue of conflicts with the requirements of other states at length in his response to written Comment No. 7, and he incorporates that response here. The Commissioner addressed the issue of reinsurers leaving the California market in his response to written Comment No. 7 and he incorporates that response here.
Tracey Laws, RAA	P. 22 - 26, General comment	"Our first significant concern ... is how foreign insurers are treated ... -- the extraterritorial nature of the regulation in general. ... The proposed regulations exceed the Department's authority with respect to foreign insurers. Section 922.1 through point 9 (.9) of the code sets forth that domestic and foreign seating [ceding] insurers shall be allowed credit for reinsurance. ... Section 922.2, regarding contract terms, does not apply to foreign insurers and neither does point 4 (.4), regarding trust funds, point 5 (.5)	These topics were addressed at length in the response to written Comments Nos. 4 and 56 through 61 and the Commissioner incorporates those responses here. In summary, as explained in the incorporated responses, the comment is an incorrect statement of California law, based upon a misreading of CIC §922.6.

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		regarding funds with health [funds withheld] and trust in LOC's. The only section which gives the Department authority to regulate foreign insurer is 922.6. ... there is a narrow exception in B [922.6(b)], that even if that is met, credit can be denied if the commissioner makes a finding that either the condition of the reinsurer or the collateral doesn't satisfy the requirement for California domicile[d] companies. "The exception [§922.6(b)]doesn't grant the commissioner the authority to promulgate regulation that would bring all foreign insurers under 922.4. To do that, and to interpret it in a way that the Department is interpreting it, essentially swallows the rule. It also renders 922.6-A [§922.6(a)] a nullity ... the language in Subsection B makes it clear that it is intended to be applied on a case by case basis. ... So there is no statutory authority for the Department to regulate the extent to which foreign insurers can take credit for reinsurance under Rule 2303.5, which is entitled Multi Beneficiary Trust; 2303.7, which is entitled Single Beneficiary Trust; 2303.8, which is Letters of Credit; 2303.9, which is Funds of Health [funds withheld]. Proposed Rule 2310 [§2303.10], which is entitled "Credit for Reinsurance of Foreign Insurers" also exceeds the statutory authority granted to the Department by 922.6. Subsection C [of	

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		§2303.10] ... says, where credit is based on the fact that the unauthorized reinsurer is either accredited or licensed in the foreign insurer['s] state of domicile, the reinsure must in substance, meet either the licensing or accreditation standards of California. Again, there is no authority for this nor has there been a showing of necessity. Moreover, the in-substance standard is unclear and it is not obvious what is needed to do to meet that standard. It would also render the whole idea of accreditation meaningless"	
Tracey Laws, RAA	P. 26 - 28, General comment	" ... the definitions of volume insurer, material reinsurance agreement ... serve to limit their regulation of foreign insurers but we would respectfully disagree with that. Volume insurer is defined in part ... The legislature ... defined what insurers it thinks ... should be treated like domestic insurers. They did this in Section 1215 ... "	The definition of "material reinsurance agreement", previously set forth in regulation §2303.2(q), was deleted. With respect to "volume insurer", the Commissioner incorporates his response to written comment No. 70. The definition of "volume insurer," now set forth in §2303.2(w), mirrors the definition of "commercially domiciled insurer" as defined in Insurance Code §1215.13.
Tracey Laws, RAA	P. 28 - 29, §2303.13	" ... there are specific issues related to some of the requirements that have to be in the contract. "One is listing -- within the agreement -- every separate contract which would serve to reduce or limit any loss to parties under the agreement. ... it is not clear why the NAIC application [sic] [sic] isn't sufficient to address this concern. And second, it is	In response to comments, former regulation §2303.13, Subdivisions (a)(1) and (2) were combined, revised, and designated as subdivision (b). §2303.13(b) now provides that an agreement must state that it constitutes the entire agreement between the parties, "except for separate contracts expressly disclosed within the agreement or in an exhibit incorporated by reference." The prior requirement to list all agreements that might

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		potentially -- again an unworkable and difficult standard ... "The second provision ... that is problematic is the requirement that there be an entire agreement clause ... There is no authority for that and, again, this is something that would adversely impact the contractual rights of the parties. If for example the parties are in an arbitration and this clause is in the agreement, this clause would arguably prohibit any kind of testimony or evidence about the parties' intent or any kind of discussions that may have been going on in the underwriting process.	reduce, limit or affect losses under the reinsurance agreement has been deleted. As set forth in the Initial Statement of Reasons, an "entire agreement" clause and a list of related contracts is necessary to permit the Commissioner to prevent the use of side agreements that mitigate or eliminate transfer of risk or otherwise materially alter the terms of the reinsurance. An entire agreement clause and list of related agreements is consistent with NAIC disclosure requirements. As also set forth in the Initial Statement of Reasons, the authority for this requirement includes, but is not limited to, Insurance Code §922.3. In response to comments regarding parole evidence, subdivision (b) now provides that the entire agreement clause "shall not be construed to limit the admissibility of evidence regarding the formation, interpretation, purpose or intent of the reinsurance agreement."
Tracey Laws, RAA	P. 29 - 30 §2302.13	"Subsection B of 2303.13 ... seeks to require specifics insolvency-clause language ... It does not contain the entirely of 922.2 that would allow for a cut through.	In response to comments, subdivision (b) of regulation §2303.13 regarding specific insolvency clause language was deleted. It was replaced with subdivision (d), which states that an agreement must have an "acceptable insolvency clause" and which provides that for a domestic insurer, the clause must comply with Insurance Code §922.2(a)(2), which permits cut-through endorsements.

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Tracey Laws, RAA	P. 30, §2303.13 (b)(5)	" ... contrary to Section 1031, which preserve contractual setoffs and [in] insolvency, and that it is also contrary to the Prudential Re decision which validates the setoff rights and [in] insolvency"	In response to comments, the sections of the regulations that limited the application of setoffs in insolvency were deleted.
Tracey Laws, RAA	P. 30 - 31, §2303.14	"Another area of concern for us is the materially deficient standard ... The Department's use of Section 717 [of the Insurance Code] to mandate contract provisions is overreaching and unauthorized. ... Materially deficient isn't defined in the statute. The regulation however defines it to mean several different possible reinsurance arrangements. One is any agreement that doesn't apply [comply] with these regulations. ... Second, if it results in a policyholder's [sic] surplus that is not reasonable in relation to the insurers [sic] outstanding liability and adequate to meet its financial needs. ... I have talked to our member company people about how that would be applied and they found it to be confusing, vague and found it difficult to know how to determine if you can meet this financial task." "The third way that a reinsurance arrangement can be materially deficient is if they are not satisfactory to the commissioner on the basis that he is unable to determine that the arrangements pose no undue risk to the seating [ceding] insurer, its policyholders or creditors. Again, this is vague and there is [sic] no	Preliminarily, §2303.14 was substantially revised and simplified to provide greater clarity. The specific definition of material deficiency formerly in §2303.2(r) and referenced in the comment has been deleted. The RAA has indicated that it does not object to the revised regulation. As the comment notes, "materially deficient" is statutory language from Insurance Code §717. Insurance Code §700(c) makes §717 applicable to licensees. §717, Subdivision (d), provides that a condition of maintaining a certificate of authority to transact business in California is that the licensee must have "reinsurance arrangements" that are not "materially deficient." One or more reinsurance agreements that do not comply with the requirements of §§922.1 *et seq.* and the regulations that implement those sections may expose a ceding insurer to hazardous financial conditions, may expose it to adverse financial conditions (such as an inability to pay claims as they become due), or may otherwise expose it to detrimental conditions of concern to the Commissioner. Accordingly, one or more reinsurance agreements that do not comply with the regulations may

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		criteria for what will be deemed satisfactory of what is undue risk."	create a material deficiency in an insurer's reinsurance arrangements. In response to comments regarding the uncertainty of know when a licensee's reinsurance arrangements may be determined "materially deficient", a new provision has been added in §2303.14(d) to provide that the reinsurance arrangements of a licensee may be found to be materially deficient for purposes of CIC §§700(c) and 717(d) if 25% or more of a licensees business is ceded under contracts which the Commissioner has determined to be deficient as to form.
Tracey Laws, RAA	P. 31 - 32, Section 2303.14	"Materially deficient ... is primarily used ... in Section 2303.14. 2303.14 ... applies to material reinsurance agreements of volume insurers. For the part that applies to seating [ceding] insurers, again, it is requiring the insolvency clause that we talked about from point 13 (.13) ... It also includes problematic language that requires that setoff be disregarded in insolvency. It also requires that domestic seating [ceding] companies have a provision for California jurisdiction as well as a California choice of law provision ..."	As previously noted, the definition of "materially deficient" previously set forth in regulation §2303.2(r) was deleted. The provisions regarding the insolvency clause, California jurisdiction and California choice of law were deleted.

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Tracey Laws, RAA	P. 32 - 33, §2303.14	" ... two additional provisions that are problematic. "The first of those had to do with funds that are transferred through an intermediary. ... " ... when a reinsurer makes payment to the seating [ceding] company, the seating [ceding] company has to actually recover it; it is not being payment when the intermediary gets it. There is no statutory authority to mandate a transfer of credit risk ... there is long established principle of agency law ... that the intermediary is the agent of the seating [ceding] company . This is reflected in the California Intermediary Act ... "	This issue is addressed in the response to written Comment No. 139 which the Commissioner incorporates here by reference. Additionally, the reasons for the transfer of risk to the reinsurer for payments received by an intermediary from a ceding insurer and for retention of the risk by a reinsurer until payments are received by the ceding insurer are contained in the Initial Statement of Reasons.
Tracey Laws, RAA	P. 33, §2303.14	"Another problematic provision is one that requires an interim remedy and arbitration when the seating [ceding] insurer contends that the reinsurer has breached the agreement because of some alleged failure or refusal to pay amounts the seating [ceding] insurer claims are due. ... "	The interim remedy provisions that were set forth in regulation §2303.14(b)(6) were deleted.
Tracey Laws, RAA	P. 34, §2303.20	"... Section 2303.20 which provides reinsurer's failure to make payment and court's settlement report shall constitute not carrying out its contracts in good faith in violation of Section 704. ... "	The provisions of regulation §2303.20 regarding failure to make payments as constituting failing to carry out contracts in good faith was deleted.

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Tracey Laws, RAA	P. 34 - 36, General comment	"The last thing I would like to comment on is the lack of economic analysis. ... "I would also note that the statement of reasons admits there was no specified studies provided upon and adopted in the proposed regulation. " ... micro managing the reinsurance agreement placement process, regards insurers who have a choice of where to deploy their capital from participating in the California market. " ... The vast majority in the states -- as Marsha said -- adopted the NAIC model law and to our Model Regs for credit reinsurance is a form substantially similar to the models. Embodied in that is a difference to the domiciliary regulator in a sense that we need some sort of uniformity throughout the United States. ... "	The Commissioner incorporates his responses to similar comments by Philip O'Connor and Marsha Cohen. The Commissioner has provided sufficient evidence in the Rulemaking file in support of specific sections of the regulations. These issues were also addressed in the response to written Comments No. 3, 7, 10 and 54, which the Commissioner incorporates here by reference.
Doug Martin, Firemans Fund Insurance Company and Allianz Affiliates	P. 42 - 44, General comment	" ... we are concerned about the impact of the extra territorial reach of these Regs which has been addressed copiously by the prior speakers. ... should ... the extra territorial reach of these regulations succumb to ... legal challenge, Fireman's Fund would, again, find itself disadvantaged competitively. ... working with all interested parties to make sure that the extra territorial reach of the commercial domestication, the volume insurer questions and the other definitions that are expressed in the regulations	The Commissioner incorporates his response to prior comments at the hearing regarding "extraterritorial" issues and his response to written Comment No. 4. The definition of "material reinsurance agreement" was deleted and in response to a number of comments, the definition of "volume insurer" was changed to conform it to the definition of "commercially domiciled insurer" set forth in Insurance Code §1215.13. After making these and other changes, Fireman's Fund and Allianz were among those organizations that had objected to the

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		to be as Constitutionally [sic] sound as possible so that Fireman's Fund does not have to bear up under the weight of the of these [sic] regulations.	initial draft of the regulations, but have since submitted written statements of non-opposition to the revised text.
Kerian Bunch, Firemans Fund Insurance Company and Allianz Affiliates	P. 44 - 45, General comment	"We impose [oppose] the proposed regulations quite simply due to our concern that they will adversely impact the reinsurance marketplace in California. .... we believe that the current regulations as presented will result in reduced past the higher prices for reinsurance. ... reinsurers are testifying what they will consider reducing the amount of capital they make available in California if the regulations are passed. It isn't clear to us what the Department's rationale is behind the regulations. An example of that is several of the provisions provide discretion to the Department, but there isn't any indication about how that discretion can or will be applied. "The Department hasn't provided its reasons for promulgating the Regs or any economic impact study. And we question whether the Department has the requisite authority to effect the sweeping change envisioned in the Regs."	The Commissioner incorporates his responses to similar comments that were made at the hearing, as well as the Commissioner's responses to written Comments Nos. 3, 10, 17, 54 and 162. Ms. Bunch has not offered any facts or theoretical basis to which the Commissioner can respond regarding an adverse impact and as previously noted, the regulations are based in most part on Bulletin 97-5, which has been in place for years. Further, as also previously noted, the regulations are also based in large part, although with some important differences, on the NAIC Credit for Reinsurance Model Regulations. Therefore, the Commissioner believes that the regulations are not likely to have an adverse impact on the reinsurance marketplace in California, and in any case, are not likely to have an impact that outweighs the benefit to the public. The comment does not offer a factual or theoretical basis for the assertion that the regulations will cause reinsurance prices to increase and capital will be

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			sequestered from California. The Commissioner's reasons for promulgating each section of the regulations are stated in the Initial Statement of Reasons and the changes from the initial regulations to the final regulations are described in the Final Statement of reasons. The regulations cannot describe or anticipate every circumstance that may, for example, constitute a material deficiency, warrant the granting or disallowance of statement credit, or otherwise not comply with or be addressed by the regulations, but which may either comply with or violate sections of the Insurance Code with respect to reinsurance. The regulations are not intended to limit the authority given to the Commissioner under the Insurance Code and therefore, where appropriate, the regulations note that the Commissioner has retained his discretion to address matters that are within his authority but which are not covered by the regulations.
John angan, American Council of Life Insurers ("ACLI")	P. 46, - General comment	" ... over 95 percent of our members would be considered volume insurers. ... "Our biggest concern ... is the extraterritoriality issue. "	The Commissioner incorporates his responses to prior comments at the hearing regarding the "extraterritoriality" issue and his responses to written Comments Nos. 4 and 70..

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John Mangan ACLI	P. 47, §2303.13	" ... one part of the proposed rule says that an insolvent life insurer's reserve credit becomes zero when it becomes insolvent. ... We question whether that doesn't make the hole larger for the receiver and the guarantee associations. And we wonder how that would affect California law and also other states that participate in insolvency.	This comments reflects ACLI's interpretation of the effect of denying offsets in liquidation proceedings. The insolvency clause and offset provisions that caused ACLI and the industry great concern have been deleted.
Ted Angelo, Association of California Life and Health Insurance Companies	P. 48 - 49, General comment	" our primary concerns from ACLHIC's perspective are the extra territoriality issue, deviations from the best practices standard that have worked well ... there is no evidence that 975 [97-5] Bulletin has been insufficient or jeopardized solvency, that's NAIC/SAP 61 nor the schedule as [of] disclosures in the NAIC Annual Statement have been indicators of a problem that needs to be rectified in a rapid fashion. " ... deviations from the NAIC best practices in this proposed regulation would and could result in denial of reserve credit for California licensed non domestic, if no requirement to pay within 30 days is in a contract.	The Commissioner incorporates his prior responses to comments at the hearing regarding "extraterritoriality" and the derivation of these regulations from Bulletin 97-5 and the NAIC Credit for Reinsurance Model Regulations, as well as his responses to written Comments Nos. 4, 7, 17 and 54. The requirement in regulation §2303.13(a)(3) for payment within 30 days of a quarterly report has been deleted.
Steve Suchil, American Insurance Association ("AIA")	P. 50 -51, General comment	"A chief concern with the proposed regulations is the extent that it departs from uniform laws, standards and regulations throughout the nation. Failure to adhere to the uniform laws, standards and regulations will harm both California domestic insurers seeking to compete in other states and national insurers who may be	The Commissioner incorporates his response to similar comments at the hearing regarding the NAIC standards and his responses to written Comments Nos. 4, 7, 10, 19, and 20. The comment does not indicate which sections are believed to deviate in a material manner from the NAIC model regulations and other purported

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		seeking to increase their presence n California. "The most troubling aspect of the proposed regulations is their departure from the NAIC model law, standard accounting practices, and the laws and regulations used in other states. ... "We believe the regulations will increase administrative costs and burdens to all insurers doing business in California. ... "	uniform laws and national standards. In the absence of specificity, the Commissioner notes that the derivation of each regulation section (as then proposed) and the reason for varying from the NAIC regulations are set forth in the Initial Statement of Reasons. The Commissioner incorporates his prior response to comments at the hearing regarding administrative costs and burdens.
Steve Suchil, AIA	P. 51 - 52, §§2303.8 - 2303.10	" ... it is difficult to determine which regulatory sections ... apply to domestics and which apply to foreign and domestics, and which apply to domestics and foreign insurers with a significant volume of California business. "For example, Section 2303.8 concerns credit for reinsurance secured by a letter of credit. Section 2303.7 contains similar language. All of these provisions are worded to apply only to domestic insurers. Section 2303.10 provides that where foreign insurers claim credit based on a letter of credit or a trust agreement, the security must, in substance, meet the standard for like security in California. It is impossible to determine with certainty whether the regulations through section 2303.10, intend to apply the mandatory California choice of law provisions to	The Commissioner incorporates his response to written Comment Nos. 16, and 56 through 59. The Commissioner notes that the choice of law requirement of regulation §2303.8 was deleted (§2303.7 did not contain a choice of law requirement.)

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		foreign as well as domestic insurers.	
Sam Sorich, Property Casualty Insurers Association of America and Association of California Insurance Companies ("ACIC")	P. 54, General comment	"First the Department of Insurance has failed to provide evidence in the rulemaking file that justifies adoption of the regulations. ... we have seen no supporting facts, studies, expert opinion, or other information ... In a number of instances, the proposed regulations conflict with the NAIC model law and regulations on credit for reinsurance. Insurance Code Section 922.6 and other related insurance code sections were enacted by Senate Bill 1485 in 1996 ... The proposed regulations are contrary to the stated purpose of Senate Bill 1485 and will put California out of conformity with the NAIC and other states. ... the Department would have adopted regulations that are contrary to the intent of the statutes that the regulations are intended to implement."	The Commissioner incorporates his responses to written Comments Nos. 3, 7, 56 through 61, and 54. As explained in those responses, the comment is based upon an incomplete and erroneous analysis of Insurance Code Section 922.6. Like other persons providing comments, Mr. Sorich does not specify which sections of the regulations he believes vary from the NAIC model regulations, and accordingly, he does not address the reasons why the Commissioner indicated in the Initial Statement of Reasons that such variance is appropriate and necessary for California.
Sam Sorich, ACIC	P. 53 - 56, General comment	"We believe the Department has failed to take into account the economic impact of the proposed regulations on insurers, California businesses and consumers on [and] the Department of Insurance itself. "The Department has not taken into account the	The Commissioner incorporates his responses to written Comments Nos. 3, 10, 22 and 54. The Commissioner has taken potential economic impacts into account and set forth his consideration of the issues in the Notice of Proposed Action.

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		economic impact on consumers who will clearly incur a detriment from the enforcement of these regulations. The enforcement of these regulations would result in higher costs to insurers ... and these costs will ultimately be passed on to California businesses and consumers. "In addition, it appears that the Department has not taken into account its own increased costs. "Delays in receipt of approvals will delay market entry."	The comment does not offer any factual basis or support for its assumptions and its assertion that the enforcement of the regulations will detrimentally affect consumers. The comment does not indicate whether he considered whether costs, if any, that are passed on to consumers will result in benefits to consumers by providing greater certainty of the solvency of their insurer. Further, the comment does offer any factual or analytic support for the contention that the costs of compliance will be on-going costs, as opposed to one-time "start up" costs incurred to implement systems that comply with the regulations. Finally, the comment does not offer any facts indicating that such costs will be significant, that there will be on offsetting cost reductions, or that market or other forces will or will not keep such costs in check.
Sam Sorich ACIC	P. 56 - 57, General comment	"The proposed regulations would hurt California domestic insurance companies. California domestics will be at a competitive disadvantage in other states because the financial statements of California domestics will reflect lack of credit for reinsurance caused by these proposed regulations while non California domestics receive credit for contracts that do not satisfy these proposed regulations. California domestics will be viewed less favorable ... in capital markets ... An effect of this potential for increasing [sic] is the potential for increasing the solvency risk	The Commissioner incorporates his response to written Comment No. 20. The comment offers no factual basis to support its assumptions, precluding a more specific response. The Commissioner's primary concern is assuring the solvency of insurers that conduct business in California. Accordingly, the regulations are intended to assure that financial statements for such insurers represent, as accurately as possible, their assets, liabilities and overall financial health and condition. Regulators in other

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		for California domestics ... Additionally, there ought to be retaliatory actions in other states upon California domestics based on the application of California provisions on those states' domestic insurers that have significant California business."	states are, of course, free to adopt accounting practices which permit the recording of assets or reduction of liabilities that are not acceptable in California and the Commissioner and other states' regulators may reasonably disagree as to the solvency risks that other states' practices create. The Commissioner, however, is not bound by other states' view of solvency concerns and cannot disregard solvency risks to California insureds.
Sam Sorich ACIC	P. 57 - 58, General comment	"Foreign insurers that write a significant portion of their business in California would have to comply with the regulations' limit on credit ... and the ... requirements for reinsurance contracts. For foreign insurers licensed in California, especially those falling under the definition of volume insurer, there will be additional financial and accounting burdens that no other jurisdiction imposes. A foreign insurer ... may have to seek separate reinsurance agreements, intermediary agreements and letters of credit for California business. We are not sure that is even possible. In the alternative, the insurers could try to have all its reinsurance agreements modified to meet California standards; however, that assumes no conflict with other state laws of [or] regulations. Alternatively, a primary insurer could decide to allocate its capital to states other than California ... "	The Commissioner incorporates his response to written Comments Nos. 7, 10 and 19. The Commissioner incorporates his prior responses to comments regarding financial burdens, including his responses regarding the lack of specificity and speculation in the comments.

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Sam Sorich, ACIC	P. 58, General comment	"The regulations would create barriers for reinsurers that want to write business in California. ... We are concerned because of the unique requirements in these regulations that the regulations would impose on reinsurers, our ACIC members and other insurers doing business in California who will have to pay more for reinsurance and many [may] find reinsurance coverage less available and more restrictive."	The Commissioner incorporates his responses to prior comments regarding expenses and the effect on the marketplace and his responses to written Comments Nos. 7 and 10. The Commissioner again notes that the comment speculates regarding costs and availability without providing any historical analogy therefor, any factual basis, or any detailed analysis thereof. The Commissioner incorporates his prior responses regarding the fact that most of these regulations are derived from Bulletin 97-5 and from the NAIC Credit for Reinsurance Model Regulations.
Sam Sorich, ACIC	P. 59, General comment	"The regulations would impose additional costs which ultimately would have to be borne by California businesses and California consumers."	The Commissioner incorporates his prior responses regarding costs imposed by the regulations and his responses to written Comment No. 10.
Mike Paiva, Personal Insurance Federation of California ("PIF")	P. 60, General comment	"The first point would be a question of whether or into the Department has adequately established the Office of Administrative Law Review Standard for the necessities for these proposed regulations. "The second concern... is the potential impact on California domestics. ... "The last point ... a concern over the deviation from existing NAIC model credit from the insurance regulations and the potential for a lack of sufficient	The Commissioner believes that he has met all legal requirements for the adoption of the proposed regulations. The Commissioner incorporates his prior responses to comments concerning financial and market impacts on California domiciled insurers and the relationship between the regulations and the NAIC model and his responses to written Comments Nos. 54, 7, and 20.

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		clarity and definition within the proposed regulations that we have here today."	
Bruce oung, RAA	P. 60 - 63, General comment	[Response to comments by General Counsel Gary Cohen regarding working cooperatively with the Department and the Legislature.]	The Commissioner has worked cooperatively with the RAA and other major trade associations since the public hearing in support of AB 2400, which addressed the industry's major concerns regarding the insolvency and offset clauses.
Debra Hall, Swiss Re	P. 64 - 68, General comments	"California historically has applied their credit for reinsurance laws on an extra territory [territorial] basis and she describes her involvement in the adoption of Insurance Code §922.6(b). She interprets that section as applying only on a "case by case basis." … "What the regulation has done, is with the exception -- containment of Section B -- swallow the rule." [Discussion of international regulatory efforts.]	The Commissioner disagrees with the suggested interpretation of Insurance Code 922.6(b) and incorporates his responses to written Comments Nos. 56 through 61.
Debra Hall, Swiss Re	P. 68 - 70, General comment	" ... the regulation that is now being proposed carries a great cost. ... Examples of those [impacts on business] include briefly, our having to restate our financial statement to be on a California specific basis. Our being subject to denial of statement credit in the event that the Department finds that the grounds of the trust is the letters of credit or it finds the power that we have with our parent are not in keeping with	The Commissioner incorporates his prior responses to comments regarding the costs and burdens that may result from the regulations and the comments regarding capital flight from California and also his responses to written Comments Nos. 10 and 19. Moreover, the regulations have been significantly

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		California requirements. Also being subject to potentially different risk transfer requirements by the selective incorporation of that 62 and NAIC guidance to the regulations. ... "It [the regulations] imposes burdens, inconsistencies and salutary, statewide complexities and uncertainties. All of these translate into regulatory costs ... "If the regulation is adopted, Swiss Re would have to re evaluate the capital commitment that they made to the California marketplace for both California domicile insurers and California volume insurers."	revised and have resolved industry concerns, in that all of the major trade associations have submitted written statements of non-opposition to the revised text.
Debra Hall Swiss Re	P. 70 - 73, General comments	(Comments regarding a "historically hostile" relationship between reinsurers and the Commissioner in connection with the liquidation of California insurance companies and regarding cooperation with the Commissioner in working with the California legislature.)	The comments do not pertain to sections of the regulations.